

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DHF

CHARLES INZERILLA,

Plaintiff,

-against-

O R D E R

JO ANNE BARNHART,
Commissioner of Social Security,

06 CV 2210 (ARR)

Defendant.

ROSS, United States District Judge:

Schedule:

Administrative record filed by 9/12/2006

Motion for Judgment on the Pleadings
to be **filed** by at the latest, by
(Motion may be due earlier; see below) 11/12/2006

Plaintiff filed the complaint for review of an HHS decision pursuant to 42 U.S.C. § 405 on May 12, 2006. The parties are directed to adhere to the following policies, which the Eastern District of New York's Board of Judges has adopted for the disposition of Social Security cases.

1. Defendant shall proceed promptly to obtain the administrative record of the proceedings below, and shall file it not later than 120 days after the complaint was filed, unless an extension is granted by order of the Court on good cause shown. If defendant is unable to file the record by that date, then the Court should be notified in

writing by that date. Such notification should include a request for an extension which specifies a date and demonstrates the good cause for the extension, including the date the administrative record was requested, whether or not it has been received, and the most recent efforts made to obtain it.

2. Defendant shall move for judgment on the pleadings, within 60 days after defendant receives the administrative record, or within 180 days after the filing of the Complaint, whichever is earlier. If this is not possible, the Court should be notified in writing by whichever of the above dates is earlier. Such notification should include a request for an extension which specifies a date and demonstrates good cause for the extension.
3. Plaintiff shall file any reply or cross-motion within 30 days of the filing of defendant's motion for judgment on the pleadings. If this is not possible, the Court should be notified in writing and such notifications should include a request for an extension which specifies a date and demonstrates the good cause for the extension, including the date the administrative record was requested, whether or not it has been received, and the most recent efforts made to obtain it.

SO ORDERED:

Dated: Brooklyn, New York
May 18, 2006

ARR
Allyne R. Ross
United States District Judge

COPIES OF THIS ORDER WERE FORWARDED TO:

Douglas C.J. Brigandi, Esq.
214-11 Northern Blvd.
Suite 210
New York, NY 11361

U.S. Attorney's Office
EDNY
Civil Division
One Pierrepont Plaza
Brooklyn, NY 11201
ATTN: Jannette Rodriguez

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

cv 06 2210

CHARLES INZERILLA
SS# 056-42-1203

Plaintiff,

- against -

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

CD *CD* CIVIL COMPLAINT

Civil Action No. :
CV-

JO ANNE BARNHART,

COMMISSIONER OF SOCIAL SECURITY *MAY 12 2006* *

BROOKLYN OFFICE
Defendant.

CD *CD* *J. ORENSTEIN, M.J.*

COMES now the PLAINTIFF above-named, by his attorney, DOUGLAS C. J. BRIGANDI, and as a cause of action against the above-named DEFENDANT, alleges and shows to the court as follows:

1. That at all times hereinafter mentioned, Plaintiff was and still is a resident of the County of Queens, City and State of New York, residing at 90-50 Union Turnpike, Glendale, New York 11385-8014.
2. That the Defendant is the Commissioner of Social Security of the United States, and at all times heretofore and

CD

hereinafter mentioned, was in the exercise of his duties as such.

3. That the Defendant, as Commissioner of Social Security, has full power and responsibility over Disability Insurance Benefits and Supplemental Security Income Benefits under the Social Security Act, as amended.

4. That this is an action in the nature of a review of a final decision or decisions of the administrative law judge pursuant to the provisions of Section 205(g) and/or 1631(c)(3) of the Social Security Act, as amended, 42 U.S.C. Section 405(b) and 1383(c), and other proper statutes of the United States for the review of a final decision of the Defendant herein.

5. That Plaintiff became entitled to receive Disability Insurance Benefits by virtue of Plaintiff's inability to perform any substantial gainful activity, due to his medical condition; that the diagnosis of record of the Plaintiff is as follows:

- A. Posterior bulging of the L5-S1 disc;
- B. Degenerative disc disease with low back pain;
- C. Lumbar radiculopathy and lumbar myofascitis;
- D. Lateral epicondylitis of the right (dominant) elbow;



E. Reactive depression.

6. The Plaintiff's disability has been established and began on October 7, 1997.

7. The Plaintiff is 56 years of age, and all his work experience in the past has been as a construction worker/laborer which involved constant stooping, lifting of heavy objects, walking, standing, bending and carrying for long periods of time; that due to his various ailments, Plaintiff can no longer engage in his known occupation, and is unable to perform any type of gainful employment.

8. That the Bureau of Disability Insurance of the Social Security Administration disallowed petitioner's application upon the grounds that the petitioner did not have an impairment or combination of impairments of the severity prescribed by the pertinent provisions of the Social Security Act to establish a period of disability or to allow Disability Insurance Benefits and/or Supplemental Security Income Benefits.

9. That on November 12, 1997, the Plaintiff filed an concurrent applications for Disability Insurance Benefits, which application was denied.

10. That subsequent thereto, Plaintiff requested a hearing, and on January 8, 1999, a hearing was held, which resulted in a denial of the Plaintiff's claim on February 10, 1999.

11. Thereafter, Plaintiff requested a review by the Appeals Council, and after its consideration, said request for review was denied.

12. Plaintiff commenced a lawsuit by filing a Summons and Complaint in the United States District Court for the Eastern District of New York in the year 2000 (CV-00-1294), which was assigned to the Honorable Allyne R. Ross, United States District Court Judge.

13. As a result of said action, Judge Allyne R. Ross signed a Stipulation and Order, dated July 5, 2000, remanding the case to the Commissioner for the purpose of further administrative

procedures including a new hearing before an Administrative Law Judge.

14. That subsequent thereto, a second hearing was held on December 12, 2000, which resulted in a denial of the Plaintiff's claim on January 18, 2001.

15. Thereafter, the claimant filed a timely request for review by the Appeals Council for the second time, and after its consideration, said request for review was denied.

16. Plaintiff commenced a second lawsuit by filing a Summons and Complaint in the United States District Court for the Eastern District of New York in the year 2002 (CV-02-5405), which was reassigned to the Honorable Allyne R. Ross, United States District Judge.

17. As a result of this action, Judge Allyne R. Ross issued an Opinion and Order, consisting of fourteen (14) pages, on October 6, 2003 remanding the case for a second time to the Commissioner for further proceedings consistent with her opinion.

18. Thereafter the case was reassigned to the then Fresh Meadows, Queens, Office of Hearings and Appeals, and was assigned to Administrative Law Judge Seymour Fier, who scheduled a Supplemental Hearing with an impartial medical expert and a vocational expert.

19. A third hearing was conducted on April 27, 2004, which resulted in a denial of Plaintiff's claim on June 2, 2004.

20. Therefore, a timely request for review was filed with the Appeals Council, and after its consideration, the Counsel, on March 18, 2006 issued a Partially Favorable Decision finding that the Plaintiff was disabled as defined in the Social Security Act since February 19, 2000, but not before that date.

21. That the decision of the Appeals Council as to the period from October 7, 1997, the alleged disability onset date through and including February 18, 2000, was erroneous and not supported by substantial evidence of record.

22. That the decision of the Administrative Law Judge, which was affirmed by the Appeals Council, is contrary to law, and



contains flagrant errors, distorts the medical record, and fails to follow the treating physicians rule as required by the Second Circuit, Court of Appeals.

WHEREFORE, Plaintiff respectfully prays that:

- a) A Summons be issued to Defendant directing her to appear before the Court;
- b) Defendant be ordered to submit a certified copy of the transcript of the record, including evidence upon which the findings and decisions complained of are based;
- c) Upon such record, that this court modify the decision of the Defendant to grant maximum monthly Disability Insurance Benefits and/or Supplemental Security Income Benefits to the Plaintiff, retroactive to the date of initial disability; and
- d) For such other and further relief as to this court may deem just and proper.

Dated: Bayside, New York
May 10, 2006

PLAINTIFF: CHARLES INZERILLA
90-50 Union Turnpike
Glendale, NY 11385
SS# 056-42-1203

Yours, etc.



DOUGLAS C.J. BRIGANDI

Attorney for the Plaintiff

214-11 Northern Boulevard

Bayside, New York 11361

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CV x 06 2210

CHARLES INZERILLA
SS# 056-42-1203

Plaintiff,

EXPLANATION

- against -

JO ANNE B. BARNHART
COMMISSIONER OF SOCIAL SECURITY,

Defendant.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

g MAY 12 2006 ★
BROOKLYN OFFICE

J. ORENSTEIN, M.J.

PLAINTIFF commenced a law suit by filing a Summons and Complaint in the United States District Court for the Eastern District of New York in the year 2000 (CV-00-1294) which was assigned to the Honorable Allyne R. Ross.

As a result of said action, Judge Ross signed a Stipulation and Order dated July 5, 2000 remanding the case to the Commissioner of Social Security.

At that point said case was closed.

Plaintiff commenced a second lawsuit by filing a Summons and Complaint in the United States District Court for the Eastern District of New York in the year 2002 (CV-02-5405), which was reassigned to the Honorable Allyne R. Ross.

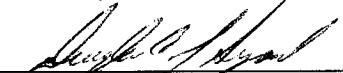
As a result of this second action, Judge Ross issued a fifteen (15) page Opinion and Order, dated October 6, 2003, once again, remanding the case to the Commission for further proceedings consistent with her opinion.

This new Civil Case is related to the same parties, as well as the same issue (i.e. Social Security Disability, Supplemental Security Income Benefits).

Dated: Bayside, New York
May 10, 2006

PLAINTIFF: CHARLES INZERILLA
90-50 Union Turnpike
Glendale, NY 11385
SS# 056-42-1203

Yours, etc.



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